

MEETING OF THE BOARD OF CITY COMMISSIONERS

OCTOBER 11, 2011

The Board of City Commissioners met in regular session on October 11, 2011 at the hour of 5:15 p.m. in the Tom Baker Meeting Room, City/County Office Building, 221 North Fifth Street, Bismarck, North Dakota. There were present: Commissioners Seminary, Smith, Askvig and President Warford. Commissioner Grossman participated by telephone.

A Chaplain of the Bismarck Police Department presented the invocation.

1. The Board of City Commissioners considered approval of the minutes of the special meeting on September 22, 2011 and the regular meeting on September 27, 2011.

Commissioner Askvig made a motion to approve the minutes. Commissioner Seminary seconded the motion. Upon roll call, the commissioners voted as follows: Ayes: Commissioners Seminary, Smith, Askvig, Grossman and President Warford. Nays: None, the motion carried.

2. CONSENT AGENDA

A. The Board of City Commissioners considered and approved voucher numbers 1020825 to 1021287.

B. The Board of City Commissioners reviewed the personnel actions.

C. The Board of City Commissioners considered application for tax abatement for:

- 1470 Eastwood St - Disabled Veteran - 2010 & 2011: Michael & Kristi Goff qualified for the abatement.
- 815 W Avenue B – Five (5) Year Remodeling Tax Exemption – 2009: Garret Senger qualified for the abatement.

D. The Board of City Commissioners considered and called for a public hearing on a request to locate a new Class F-3 liquor license at 307 North Third Street (dba Space Aliens Bar-B-Que Pit).

E. The Board of City Commissioners considered request from Finance Department for approval of the IP Phone Installation. The city currently has a contract with BEK Business Solutions for the equipment and maintenance of the city-wide IP telephone system. Last year fiber was installed at the Wastewater Treatment Plant so now we are able to add IP phones at this building. The cost for BEK to provide the equipment, licenses, software and installation is \$16,331.90 with funding from the Utility

Fund. The cost associated with the installation has been reviewed by Information Technology (IT) and the Utility and both recommend approval by the Board.

F. The Board of City Commissioners considered the request from the Bismarck Airport for approval of a sponsorship of the 2012 Upper Midwest Aviation Symposium. Airport staff requests the Board approve a \$5,000 sponsorship to the North Dakota Aviation Council (NDAC) for the Upper Midwest Aviation Symposium which will be held in Bismarck in March 2012. The symposium promotes staff professional development and fosters the aviation industry in Bismarck and the state of North Dakota. The Bismarck Airport staff has attended and participated in the symposium for many years.

Airport staff actively supports the professional development activities of the NDAC and its member organization, the Airport Association of North Dakota (AAND). AAND conducts the majority of the professional development offered to airports at the symposium. Airport staff has supported these efforts over the years by participating in presentations, organizing and acting as representatives or officers of NDAC and AAND. Our Airport Operations Manager, Tim Thorsen, currently serves as the President of AAND and for this year also serves as the Chairman of the North Dakota Aviation Council.

In the past when the symposium was held, the hosting community airport generally sponsors the symposium with \$5,000. For this sponsorship, Bismarck Airport will get its name and logo on the posters, banners, programs and other printed material for the symposium. Other airports typically support the Upper Midwest Aviation Symposium with sponsorships of various amounts when the symposium is not held in their city. Staff believes this sponsorship will promote public and industry awareness of Airport facilities in Bismarck and in the state of North Dakota and is in accordance with the FAA's "Policy and Procedures Concerning the Use of Airport Revenue". The Bismarck Airport would pay the sponsorship from budgeted marketing funds. Staff recommends approval.

G. The Board of City Commissioners considered the following requests from the Human Resource Department:

- Temporary staffing for Police Department. One police officer from the Police Department has been called to activity military duty. The Police Department is requesting to fill this position with temporary staff. Human Resource staff supports the department's request because staffing requirements during this busy time it is important to the functional operation of that department. This temporary individual hired will be released, if not hired for a regular position, when the regular staff returns from active duty.
- Onetime exception to Annual Leave Policy. Several individuals canceled annual leave or were not able to schedule annual leave due to the 2011 flood event. It is the policy of the city of Bismarck to reduce annual leave balances to 477/360 hours (Fire/City) beginning with the new budget year.

Therefore, staff recommends that the Board approve a onetime exception to the policy and allow each of the individuals until March 31, 2012 to utilize their individual excess annual leave balances. Any excess annual leave balances on March 31, 2012 will be forfeited. No individual will be allowed to carry any excess annual leave balances into 2013.

H. The Board of City Commissioners considered the following requests from the Police Department:

- Authorization to accept grant for \$399,967 from the Office on Violence Against Women.

At the Board's meeting on January 25, 2011, approval was granted for the Police Department to apply for a grant through the U.S. Department of Justice, Office on Violence Against Women (OVW) under the Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program. This grant was applied for in partnership with the Abused Adult Resource Center (AARC) and would be a continuation of a current OVW grant that provides funding for two police officer positions as well as specialized training. The grant also provides funding for the expenses for advocate staff at AARC.

Staff is pleased to inform the Board that we have received notification from OVW that we have been approved in our application for funding under this grant program in the amount of \$399,967. The grant period runs through August 31, 2014. These police officer positions are included in the 2012 budget as a priority initiative for personnel with the grant as the funding source.

Staff requests authorization to proceed with the acceptance of the grant. There is no obligation that the city continues funding the two police officer positions upon expiration of the grant and there is no match requirement. The grant award documents will be submitted through the established city grant/contract review process.

- Authorization to receive donation from Tait Radio Communications to establish a memorial display for Sergeant Steve Kenner.

The Police Department has been contacted by Tait Radio Communications, Limited, and the company wishes to make a cash donation in the amount of approximately \$3000 to provide funding for a memorial display at the Police Department in honor and memory of Sergeant Steve Kenner. Tait Radio Communications is the vender that provided the equipment and completed the interoperable voice communications project. Staff from Tait Radio Communications was in Bismarck working on the implementation of the project on the day that Sergeant Kenner was killed and subsequently relayed the details of this tragic incident to company management.

Tait Radio Communications has already completed the communications project and has submitted a final billing in accordance with the established contract. Staff requests authorization to receive this donation for the purpose of establishing a memorial display

at the Police Department for Sergeant Kenner. There are no current funds designated for this purpose.

I. The Board of City Commissioners considered the request from Bismarck-Burleigh Public Health for permission for the Women's Way program to accept donations from the following organizations:

- Bismarck State College Spike Out Breast Cancer game - Wednesday, October 12, 2011
- Dakota Wizards Purple Joins Pink: Social – Saturday, October 22, 2011; Breast Cancer Game for Survivors – Saturday, November 26, 2011
- Conlin's Furniture "Think Pink" campaign for October with live radio remote – Saturday, October 15, 2011 (funds will be divided between six North Dakota Women's Way offices)
- BisMan Bombshellz Roller Derby Bout – Saturday, October 29, 2011
- Submit application to the Bismarck Krolls Marathon 2012 to be considered as a charitable organization for even proceeds

The organizations listed above have contacted Women's Way and offered to donate proceeds from their event(s). Proceeds from these events will assist with medical expense related to breast and cervical cancer screenings, such as breast follow-up, biopsies, and cancer treatments to benefit many local Women's Way clients. Funds will not be used for program operation or expenses.

J. The Board of City Commissioners considered the approval of bonds and contracts for Street Improvement District 444 (Mariner Construction, Inc).

The Board of City Commissioners then had before it for consideration the request for approval of the bond and contract on the following improvement district, completing the legal requirements as required by the N.D.C.C.

Commissioner Grossman introduced the following resolution and moved its adoption:

**RESOLUTION APPROVING CONTRACT AND CONTRACTOR'S BOND
STREET IMPROVEMENT DISTRICT NUMBER FOUR HUNDRED FORTY FOUR (444)**

BE IT RESOLVED by the Board of City Commissioners of the City of Bismarck, North Dakota that the bond and contract furnished by Mariner Construction, Inc. for the construction of Street Improvement District Number Four Hundred Forty Four (444) are hereby approved.

Commissioner Seminary seconded the motion. Upon roll call, the commissioners voted as follows: Ayes: Commissioners Seminary, Smith, Askvig, Grossman and President Warford. Nays: None, the motion carried.

K. The Board of City Commissioners considered the following from Engineering Department:

- Grant permission to Dakota Carrier Network for an Encroachment and Waiver Agreement at various locations.
- Follow up to request to apply for a grant from the Metropolitan Planning Organization to conduct a planning study along 43rd Avenue North from Butte Drive to 66th Street.

As requested by the Board, Burleigh County was contacted concerning their desire to participate in the 43rd Avenue Corridor Study. Burleigh County Commission President, Doug Schonert, agreed to participate in the study. As partners in the 43rd Avenue Corridor Study, the participation would be MPO at 80%, Burleigh County and city of Bismarck would each be 10%.

Therefore action requested of the Board is as follows:

- Approve the request to apply for the grant from the MPO to conduct a planning study along 43rd Avenue North
- Provide matching funding for the planning study
- Permission to precede preparing Request for Proposals.
- Permission to advertise for a consultant to conduct a planning study along 43rd Avenue North.

L. The Board of City Commissioners considered the following from Public Works Service Operations Department:

- Permission to apply for the North Dakota Forest Service America the Beautiful Tree Planting Grant.

The Forestry Division would like to request permission from the Board to apply for the NDFS America the Beautiful – Tree Planting Grant. The deadline for submittal is October 28, 2011. The maximum grant award would be \$10,000 and at least 50% of the total cost of the project must be matched by the city. We would like to request the full grant award of \$10,000 for the East Main Avenue tree planting project. Forestry intends on replanting approximately 50 trees along East Main Avenue. Tree species that we are interested in planting are: Amur Corktree, Kentucky Coffeetree, Black Locust, Northern Acclaim Honeylocust, Common Hackberry, and Corinthian Linden. The project will be completed by August 2013.

- Permission to request donations for the Forestry Division Partners in Planting and Arbor Day fund for 2012.

Each year the forestry division uses corporate sponsorship in the form of donations to encourage street tree planting along Bismarck's roadways. These corporate sponsorships are matched with city funds to provide a 50% match with a maximum of \$40/tree rebate. This program has been very successful and continues to provide property owners an opportunity to recover some of their costs for planting street trees.

The Arbor Day donation allows Bismarck the opportunity to celebrate Bismarck's Tree City designation and promote tree planting in our community. The donations are used to purchase plaques for outstanding commercial landscaping, recognition for volunteers who planted trees in Bismarck under the Forestry Department's guidance, purchasing of the Arbor Day tree, Apple Seed Awards, dedication plaque, printing of the Arbor Day celebration program and billboard advertising promoting Arbor Day in Bismarck.

Both of these programs are budgeted for in the Forestry Division's request to the budget committee as outlined in the Solicitation and Acceptance of Donations City Policy that was updated at the January 12, 2010 Board of City Commissioners meeting. These donations will be requested from January through May 2012. Bismarck businesses will be contacted by a letter from the City Forester asking for their support of these programs.

M. The Board of City Commissioners considered the request from the City Attorney concerning coverage for boiler insurance.

Staff recently solicited qualifications from insurance agents interested in writing the policy for the city's boiler insurance. Two responses were received, one from the Kramer Agency and one from Bain Insurance. It is staffs understanding that there are two insurance companies writing coverage for boiler insurance and both of the responding agencies can provide quotes from each. Earlier this summer staff received Requests for Proposals for our NDIRF insurance coverage and awarded four year terms to each qualified agency (Bain and Kramer). This is a similar situation where there appears to be no advantage for either firm in terms of price. Staff suggests the same be done with the boiler insurance, namely give each firm a four year term of quoting the insurance and acting as the city's agent for boiler insurance.

N. The Board of City Commissioners considered the following from the Community Development Department:

- Consider introduction of and call for public hearing on Ordinance 5849 for annexation of parts of Promontory Point IV, requested by Wachter Development, Inc. Bismarck Planning & Zoning Commission recommends approval.

ORDINANCE NO. 5849

AN ORDINANCE ANNEXING PROPERTY TO THE CORPORATE LIMITS OF THE CITY OF BISMARCK, NORTH DAKOTA, DECLARING THE TERRITORY ANNEXED; DECLARING THE SAME TO BE A PART OF THE CORPORATE LIMITS OF SAID CITY.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, NORTH DAKOTA.

Section 1. Territory Annexed. The territory and land hereinafter described is hereby declared and found to be a part of the corporate limits of the City of Bismarck, North Dakota, as follows:

Lots 9-12 & 15, Block 5; Lots 4-7, Block 6; Lots 1-4, Block 7; Lots 3-13 & 15-18, Block 8 and Lots 29-30, Block 9, Promontory Point IV.

The above described tract of land contains 21.60 acres, more or less.

Section 2. Provisions Applicable. From and after the final passage and adoption of this Ordinance and upon recording of this ordinance with the Burleigh County Recorder, the territory herein described shall be a part of the corporate limits of the City of Bismarck, North Dakota.

- Consider introduction of and call for public hearing on Ordinance 5850 for annexation of Lot 14, Block 1, Kilber Addition, requested by Dennis Senger. Bismarck Planning & Zoning Commission recommends approval.

ORDINANCE NO. 5850

AN ORDINANCE ANNEXING PROPERTY TO THE CORPORATE LIMITS OF THE CITY OF BISMARCK, NORTH DAKOTA, DECLARING THE TERRITORY ANNEXED; DECLARING THE SAME TO BE A PART OF THE CORPORATE LIMITS OF SAID CITY.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, NORTH DAKOTA.

Section 1. Territory Annexed. The territory and land hereinafter described is hereby declared and found to be a part of the corporate limits of the City of Bismarck, North Dakota, as follows:

Lot 14, Block 1, Kilber Addition, and the east half of the adjacent North 26th Street right-of-way.

The above described tract of land contains 18,164 square feet, more or less.

Section 2. Provisions Applicable. From and after the final passage and adoption of this Ordinance and upon recording of this ordinance with the Burleigh County Recorder, the territory herein described shall be a part of the corporate limits of the City of Bismarck, North Dakota.

Addendum Items:

O. The Board of City Commissioners considered approval of bonds and contracts for the 2010 Sidewalk, Curb and Gutter, and Driveway construction (Parts A-1

& A-2 to Knife River Corporation, Part B-1 to Glass Concrete Construction, and Part B-2 to Alliance Concrete)

The Board of City Commissioners then had before it for consideration the request for approval of the bond and contract on the following improvement district, completing the legal requirements as required by the N.D.C.C.

Commissioner Grossman introduced the following resolution and moved its adoption:

RESOLUTION APPROVING CONTRACT AND CONTRACTOR'S BOND
2010 SIDEWALK, CURB AND GUTTER AND DRIVEWAY CONSTRUCTION

BE IT RESOLVED by the Board of City Commissioners of the City of Bismarck, North Dakota that the bonds and contracts furnished by Knife River Corporation, Glass Concrete Construction, and Alliance Concrete for the construction of 2010 Sidewalk, Curb and Gutter and Driveway construction are hereby approved.

Commissioner Seminary seconded the motion. Upon roll call, the commissioners voted as follows: Ayes: Commissioners Seminary, Smith, Askvig, Grossman and President Warford. Nays: None, the motion carried.

P. The Board of City Commissioners considered the request from Engineering Department for approval of NDDOT Storm Water Discharge Permit and Agreement transferring permit requirements to the CMGL, LLC.

The Bel Castle Apartment property owners, CMGL 10, LLC, have requested a NDDOT storm water discharge permit into the Interstate 94 right-of-way for the property located at 1830 E Capitol Avenue.

The North Dakota Department of Transportation has prepared a storm water discharge permit for the city of Bismarck. We, in turn, have prepared an agreement transferring the responsibilities of the NDDOT storm water discharge permit to CMGL 10, LLC. Staff recommends approval of the agreement.

Commissioner Grossman made a motion to approve the consent agenda. Commissioner Seminary seconded the motion. Upon roll call, the commissioners voted as follows: Ayes: Commissioners Seminary, Smith, Askvig, Grossman and President Warford. Nays: None, the motion carried.

REGULAR AGENDA

3. The President of the Board of City Commissioners announced the hour had arrived for the PUBLIC HEARING on the transfer of the Class D liquor license at 1247 W Divide Ave (dba Bismarck Stadium Sports Bar).

There were no written or oral protests.

Commissioner Askvig made a motion to approve the transfer. Commissioner Smith seconded the motion. Upon roll call, the commissioners voted as follows: Ayes: Commissioners Seminary, Smith, Askvig, Grossman and President Warford. Nays: None, the motion carried.

4. The President of the Board of City Commissioners announced the hour had arrived for the PUBLIC HEARING and second reading on Ordinance 5848 relating to alcoholic beverages, classes of retail licenses and alcoholic beverages, license application.

ORDINANCE NO. 5848

AN ORDINANCE TO AMEND AND RE-ENACT SECTIONS 5-01-04 AND 5-01-06 OF THE CITY OF BISMARCK CODE OF ORDINANCES (1986 Rev.) BY AMENDING THE SECTION RELATING TO CLASSES OF RETAIL LICENSES AND LICENSE APPLICATION.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF BISMARCK, NORTH DAKOTA:

There were no written or oral protests.

Commissioner Askvig made a motion to adopt the ordinance. Commissioner Smith seconded the motion. Upon roll call, the commissioners voted as follows: Ayes: Commissioners Seminary, Smith, Askvig, Grossman and President Warford. Nays: None, the motion carried.

President Warford asked the Board if they wanted to at this time to assign an amount for the ordinance. At this time there is no amount so does the Board wish to assign an amount or give this more thought. Commissioner Grossman feels that the Board should give it more thought. Warford said the last several liquor licenses have gone for \$150,000 to \$202,500. Commissioner Askvig agreed the Board needs more time; he asked for a refresher about how this issue was raised. Commissioner Seminary said that he and Warford received an email request to have the last class D license being held back to be made available. So this process lets the Board determine the best step. Askvig asked if only one party is interested in this class D license or are there others. Charlie Whitman, City Attorney, shook his head no. Warford said the Board can come back later and assign an amount to the class D liquor license. At that time, the amount can be publicized and interested parties can be invited to bid on an RFP. Mr. Whitman said if the Board arrives at a minimum price and make that public, then anyone interested may contact the Board about making the last class D license available.

5. The President of the Board of City Commissioners announced the hour had arrived for the PUBLIC HEARING and Confirmation of Special Assessment Districts.

Kathy Feist, Special Assessment Analyst, appeared before the Board. She said these the following lists have been prepared according to policy and were published as required. The Special Assessment Commission met on September 15, 2011 to hear objections to the allocations and confirmed the lists as prepared. Tonight is the final hearing to consider any appeals to the Special Assessment Commission's action. Upon conclusion of this public hearing, she requests that the Board approve the assessment lists. Commissioner Askvig asked if there were any objections. Ms. Feist said several people appeared before the Special Assessment Commission on various issues.

IMPROVEMENT DISTRICT	TOTAL ASSESSED & FINANCED
Street Improvement District 421	\$791,760.41
Street Improvement District 423	\$3,552,442.88
Street Improvement District 424	\$850,725.27
Street Improvement District 427	\$1,174,377.39
Street Improvement District 428	\$210,491.70
Street Improvement District 430	\$779,390.33
Street Improvement District 431	\$315,294.72
Sanitary Sewer Improvement District 526	\$50,875.35
Storm Sewer Improvement District 532	Total Assessed: \$457,953.27
Water Improvement District 315	\$452,878.20
Water Improvement District 316	\$77,879.82

There were no written or oral protests before this Board at this meeting.

Commissioner Seminary made a motion to confirm the assessments as spread. Commissioner Askvig seconded the motion. Upon roll call, the commissioners voted as follows: Ayes: Commissioners Seminary, Smith, Askvig, Grossman and President Warford. Nays: None, the motion carried.

6. The President of the Board of City Commissioners announced the hour had arrived for the PUBLIC HEARING and Confirmation of Health & Safety Assessments.

ASSESSMENT	AMOUNT
Noxious Weeds	4,753.78
Debris Removal	474.33
Sewer Stub-ins/Repairs	28,376.39

There were no oral or written protests.

Commissioner Grossman made a motion to confirm the assessments as spread. Commissioner Askvig seconded the motion. Upon roll call, the commissioners voted as follows: Ayes: Commissioners Seminary, Smith, Askvig, Grossman and President Warford. Nays: None, the motion carried.

7. The Board of City Commissioners considered the Contract Change Order with Mariner Construction for the North Washington Street project (Street Improvement District 438) to address required additional unclassified excavation, subgrade preparation, milling material and reinforcement fabric due to unforeseen soil type and condition.

Mel Bullinger, City Engineer, appeared before the Board. He said the change order amount (\$194,420.84) stems from approximately \$35,000 of unclassified excavation, roughly \$20,000 for additional concrete work that wasn't foreseen at the time of the design (which may be for citizens asking to have their driveway widened, all of which would be assessable), additional larger area was disturbed so there was \$8,500 for seeding and mulching over and above what was originally anticipated and nearly \$50,000 for milling material which goes with that unclassified excavation and then a smaller change order for fabric. Mr. Bullinger reminded the Board about the rainy summer and the low spot on Washington is historically been a coulee. He feels that historically the materials in that portion of the road were marginal at best so they stuck a lot of material in there in order to get the road fixed. The road is fixed however not within budget, but it is close to the budgeted amount. This change order includes the remaining costs staff anticipates to bring the project full and complete including chip seal in 2012. This is one of those projects that had some soil issues.

Commissioner Seminary said he will approve the change order but asked if there was anything that could've been done to speed up this project such as extending the working day until 10 o'clock at night. Mr. Bullinger said the staff always tries to learn from issues and concerns. This project got a late start due to flood related issues and they didn't start until mid-June. The three weeks could've been all the difference in the world.

Commissioner Seminary made a motion to approve the request. Commissioner Askvig seconded the motion. Upon roll call, the commissioners voted as follows: Ayes: Commissioners Seminary, Smith, Askvig, Grossman and President Warford. Nays: None, the motion carried.

8. The Board of City Commissioners considered the following requests from the Community Development Department:
 - Minor subdivision final plat for Miriam Industrial Park Second Addition First Replat, requested by S&P Partnership, LLP, et al. Bismarck Planning & Zoning Commission recommends approval.

Carl Hokenstad, Community Development Director, said S&P Partnership, LLP, et al, is requesting approval of a minor subdivision final plat for Miriam Industrial Park Second Addition First Replat. The reason for this request is to subdivide the two lots and split them into five lots to allow for continued development of shop condos. It is located in east Bismarck, along the west side of Industrial Drive, approximately $\frac{3}{4}$ of a mile south of the I-94 interchange with Bismarck Expressway (a replat of the north 409.71 feet of Lot 17, Miriam Industrial Park Second Addition First Replat in part of the NE $\frac{1}{4}$ of

Section 35, T139N-R80W/Hay Creek Township). The City Planning and Zoning Commission held a public hearing on September 28, 2011 and based on the findings contained in the staff report, recommend approval of the minor subdivision final plat for Miriam Industrial Park Second Addition First Replat.

Commissioner Seminary made a motion to approve the request. Commissioner Smith seconded the motion. Upon roll call, the commissioners voted as follows:
Ayes: Commissioners Seminary, Smith, Askvig, Grossman and President Warford.
Nayes: None, the motion carried.

- Consider requests from two homeowners to subordinate loans from the CDBG housing rehab program

Sue Redman, Planner, appeared before the Board. She said two homeowners recently requested the city to subordinate their housing rehab loans. In the first instance, the owner of 410 S 17th Street wishes to obtain a reverse mortgage. A reverse mortgage enables an older, retired homeowner to stay in their home by converting part of the equity into funds that may be used for living expenses or home improvements for as long as the owner resides in the home. The second request came from the owner of 408 N 16th Street who wished to refinance in order to obtain a better interest rate.

The housing rehabilitation program provided CDBG assistance to homeowners to make basic repairs on their homes, but this help was in the form of a five year forgivable loan. Twenty percent of the loan is forgiven for each year of residence in the home. The intent of the loan is to prevent windfall profits if the house is sold. In this instance, for years have passed and 80 percent of the CDBG loan has been forgiven for both homeowners (\$4,917 and \$3,899 balance, respectively). Approval is recommended so the homeowners may proceed with their plans with the condition that the City Attorney must review and approve the subordination documents.

Commissioner Seminary made a motion to approve the request. Commissioner Askvig seconded the motion. Upon roll call, the commissioners voted as follows:
Ayes: Commissioners Seminary, Smith, Askvig, Grossman and President Warford. Nayes: None, the motion carried.

9. The Board of City Commissioners considered the request for permission to contribute up to \$7,500 toward completion of an updated statewide housing needs assessment.

In the information provided to the Board, Bill Wocken, City Administrator, wrote that after consultation with Sue Redman and Carl Hokenstad of the Community Development Department, he is requesting approval by this Board for a contribution up to \$7,500 toward completion of an updated North Dakota Statewide Housing Needs Assessment study. The previous study, done in 2004, needs to be updated to reflect the results of the 2010 decennial census and the recent dramatic changes in the housing situation in Bismarck and western North Dakota.

The study is proposed to be accomplished by the North Dakota State Data Center in Fargo in a format that can be updated between decennial census events with estimate data. The information contained in this document will provide regional and statewide housing trend and need information that is very valuable to conduct of HUD grant activities in our city.

The North Dakota Housing Finance Agency will contract for the full study at an estimated cost of \$150,000. The city's contribution is suggested to come from the Commission Special Project Fund which has adequate resources remaining to cover this cost, if it is agreeable to the Board.

Commissioner Askvig made a motion to approve the request. Commissioner Grossman seconded the motion. Upon roll call, the commissioners voted as follows: Ayes: Commissioners Seminary, Smith, Askvig, Grossman and President Warford. Nays: None, the motion carried.

Commissioner Seminary removed himself from the table.

10. The Board of City Commissioners considered the following requests from Bismarck Airport:

- Consider Engineering Services Agreement with Kadrmas, Lee & Jackson (KLJ) for reconstruction of the Aircraft Rescue and Fire Fighting (ARFF) Apron.

Greg Haug, Airport Manager, appeared before the Board. The work for the ARFF Apron would include plans and specifications, and construction observation. A scope of work and tasks for the contract was developed and an independent fee review was solicited from Mead and Hunt. The independent fee review was then used to assist in negotiating a contract. KLJ proposed a cost not to exceed \$54,205.76 for all work completed. The independent Fee Review done by Mead and Hunt calculated total Engineering Fees of \$52,851.27. KLJ's proposed fees are 2.5 percent or \$1,354.49 above the independent fee review and are deemed to be reasonable.

Staff estimates the Airport's construction costs to be \$234,968.00 and plans to fund the costs from Airport cash reserves and reimburse 100% of the project costs from Passenger Facility Charge (PFC) #5. Staff recommends approval of the engineer agreement that was provided to the Board. Later this year or early next spring, staff will come back before this Board with bids for the Apron construction.

Commissioner Askvig made a motion to approve the request. Commissioner Smith seconded the motion. Upon roll call, the commissioners voted as follows: Ayes: Commissioners Smith, Askvig, Grossman and President Warford. Nays: None, the motion carried. Commissioner Seminary was absent and not voting.

- Consider Engineering Services Agreement with KLJ for Runway 13/31 Geotechnical Evaluation.

Greg Haug, Airport Manager, appeared before the Board. The primary runway is showing signs of delamination of the top layer of pavement as well as differential movement in two locations. After consulting with the Federal Aviation Administration (FAA) Airports District Office, they recommended the evaluation. KLJ would have Midwest Testing bore twenty eight test cores each 10 feet deep in the runway late at night. KLJ will then study the results and give the Bismarck Airport a report with recommended actions. KLJ's proposed cost for this work is \$38,644.68 (\$16,644.68 for engineering and \$22,000 for soil boring). No independent fee estimate was done for this agreement. Initial costs for this work would be funded by the Airport with the possibility of reimbursement by FAA on a future rehabilitation project. Airport staff recommends approval of the engineer agreement provided to the Board.

Commissioner Grossman made a motion to approve the request. Commissioner Smith seconded the motion. Upon roll call, the commissioners voted as follows: Ayes: Commissioners Smith, Askvig, Grossman and President Warford. Nays: None, the motion carried. Commissioner Seminary was absent and not voting.

Commissioner Seminary rejoined the table.

11. The Board of City Commissioners considered the request from Public Works Service Operations Department to add the following change orders to present contract for levee removal.

Jeff Heintz, Service Operations Director, appeared before the Board. Due to the shortened timeframe to complete these projects before winter, staff asks for permission from the Board to allow the change orders for these levee removal activities. By forgoing the formal bidding requirements, staff and the contractors will be able to accomplish all of the activities this fall that will help to get the city levee structures removed or modified to the public's benefit. Both contractors are currently on site and can do the additional work before winter gets here.

a) Tom's Backhoe Service

- Change Order #1 – Install a 24 inch culvert under levee D to allow for drainage next spring from storm water and snow melt. Without this, staff will be required to set up pumps and man them year around. Cost equals \$8,500. Due to the cost being less than \$15,000, Commission approval is not necessary, the project manager or department head can approve this change order.
- Change Order #2 – Remove levee F tie in to the Southbay development landscape area. This is the end of the levee that protected Bismarck from flood waters moving up Burleigh Avenue into town. This tied into the slope on private property

and needs to be removed and the site restored to grass. Cost equals \$12,500. Due to the cost being less than \$15,000, commission approval is not necessary, the project manager or department head can approve this change order.

- Change Order #3 – Remove the clay levee south of Solheim School (levee D) from Washington Street South west to the backyards of western most homes on Munich Drive. This will return the school parking lot to use and allow staff to refill the borrow pit in the school yard at Solheim. Bismarck Public Schools has asked that the city return this site ASAP to use. Cost equals \$61,500. Approval by the Board is necessary since the change order is over \$50,000.
- Change Order #4 – Remove HESCO barrier on the north side of Tatley Meadows trailer court next to the storm water ditch. Cost equals \$61,320. Approval by the Board is necessary since the change order is over \$50,000.
- Change Order #5 – Remove the two lower layers of HESCO barrier along the west side of Riverwood Drive, from The Pier restaurant north to the entrance into Southport Loop. This will allow for the private parking lot to return to normal activities, increase visibility for traffic leaving Southport onto Riverwood Drive. These HESCO's need to come out now or next spring, so the costs will be incurred sooner than later. Cost equals \$75,000. Approval by the Board is necessary since the change order is over \$50,000.

Commissioner Askvig asked about Change Order #5 removing the two lower layers of HESCO barrier along the west side of Riverwood Drive, from The Pier restaurant north to the entrance into Southport Loop; where is that private levee and is it being taken down? Mr. Heintz asked if he means the levee on the west edge of Southport. Askvig said it was the levee that was allowed to tie into the HESCO barrier. Mr. Heintz said those materials are still in place; in speaking with some of the homeowners and associations they want to get those materials removed so they can allow ingress and egress to happen at that west exit. It will be their responsibility to remove that material, not ours. Askvig also asked about Change Order #3 and the clay levee south of Solheim School (levee D); did water reach that levee this year? He doesn't think we should take it down if the water reached it this year if there's a chance that it could happen again next spring. Mr. Heintz said that portion of the levee did not get touched by water.

Commissioner Grossman asked if he had missed the discussion on the funding source or if Mr. Heintz had already spoken to Sheila Hillman, Finance Director. Mr. Heintz said he's sent the change orders up through the process but he hasn't personally spoken with Ms. Hillman about a funding source yet. Ms. Hillman said she believed this would be eligible for FEMA reimbursement like any of the other activities that have been

incurred to date. Grossman said we would do that and set aside funding in addition next year for any potential expenses. Ms. Hillman said correct, for the match.

Commissioner Askvig made a motion to approve all five of the change orders for Tom's Backhoe Service. Commissioner Smith seconded the motion. Upon roll call, the commissioners voted as follows: Ayes: Commissioners Seminary, Smith, Askvig, Grossman and President Warford. Nays: None, the motion carried.

b) Knife River

- Change Order #2 – Addition of Sandbag Removal and Disposal Zone "Cottonwood Regional Removal Site" at Cottonwood Park
- Change Order #3 – Clean up Northern Plains Commerce Centre (NPCC) site and remove over 60,000 filled sandbags. There are also several piles of sand that Public Works intends to use this winter to sand the streets. That material would need to be transported to the Public Works yard and mix it up with salt sand.

Jeff Heintz, Service Operations Director, apologized to the Board in case they were wondering about the Cottonwood site. They instituted that early on because staff saw a tremendous amount of city sandbags being brought down to the county site at Washington Street and Burleigh Avenue, inundating that site actually. So this site was opened again to give those proactive Bismarck residents an outlet before their areas were collected by Knife River. That site was actually closed early on in the process and cleaned it up because Parks and Recreation needed it for some of their upcoming events. After their events were completed, they agreed to let the city reuse this site for sandbag collection. Knife River has given the city a reduced price for that site since it's not the same as collecting sandbags off the street. Commissioner Grossman asked what the costs were for those two sites. Mr. Heintz said the Cottonwood Removal Site would be \$128,700 however that will be dependent on the weight of the sand deposited at that location. He doesn't think it will actually be that much but they are keeping that site open until the end of October. He feels it will be less than the \$128,700 but can't give an exact amount. The cost of the NPCC site would be \$108,700. Due to lower volume of sand being collected curbside, these two amounts will still be less than the original contract amount of \$6.3 million at the end. He thinks it will now be closer to \$3.5 million now so the monies allocated for the \$6.3 million should easily cover these additional change orders and still have money left over.

Commissioner Grossman made a motion to approve the request. Commissioner Askvig seconded the motion. Upon roll call, the commissioners voted as follows: Ayes: Commissioners Smith, Askvig, Grossman and President Warford. Nays: None, the motion carried. Commissioner Seminary was absent and not voting.

Addendum Items:

- The Board of City Commissioners considered the request from the Public

Works Service Operations Department for permission to purchase unleaded fuel from retail vendors and Bismarck Public Schools due to emergency repairs on Public Works pump.

Jeff Heintz, Service Operations Director, said a broken hose between the storage tank and the pump island has disabled the city's unleaded fueling system at the Public Works yard. This is the city's only site to purchase unleaded fuel for all city vehicles. The contractor has ordered the parts and estimates that the pumps will be operational in a week. Because of the city policy regarding the purchasing of fuel only from Bismarck Public Works, staff requests permission for city vehicles to be fueled at the retail vendors and Bismarck Public Schools sites until the repairs are completed.

President Warford said that after he and City Attorney Charlie Whitman discussed this, Mr. Whitman suggests that the Board ask that during this time, city issued credit cards are used to purchase the gas at various locations. Warford asked if the motioner and seconder were okay with that provision. They both agreed. Commissioner Askvig asked if all of them will have city issued credit cards to use. Mr. Heintz said that is the reason for the Bismarck Public Schools location since most of the police officers don't have city issued credit cards and it's right across the street from the police station. There are a few other city offices that will have to use the Public Schools location as well. A lot of the Public Works employees have city issued credit cards and will use them as well so they won't have to deal with any out of pocket expenses.

Commissioner Grossman made a motion to approve the request with the provision that city issued credit cards are used. Commissioner Seminary seconded the motion. Upon roll call, the commissioners voted as follows: Ayes: Commissioners Seminary, Smith, Askvig, Grossman and President Warford. Nays: None, the motion carried.

- The Board of City Commissioners considered the change order to the present contract with the Mejorando Group for Strategic Planning Services.

Commissioner Askvig said this process has been on hold. It was at the point of the draft mission statement that needed to be tightened up. This was after the initial public input process which was a very large part of the planning process. This project has been on hold for five to six months because of flood which was the right thing to do. The week that the flood event really started was the week that they were supposed to sit down and really hammer out some things. The project team has sat down with the consultant and they all feel that the flood event has changed where to go in the future and what kind of community we want to be in the future. The original contract amount was for \$29,000 for professional consulting services and \$10,000 for travel expenses. The contract change amounts are an additional \$13,750 for professional consulting services and an additional \$5,000 for travel expenses. The revised tentative schedule was provided to the Board as well. So \$4,500 will come from the 2011 Commission Special Projects and \$14,250 will come from the 2012 Project Budget.

Askvig feels it is important to do this right; we could go on and finish from where we started and put something together but he feels that would just sit on a shelf. He would rather stop, pause, pay the extra money but it will get us additional feedback from the community and assess where the Board is at and move forward. Not that the project is going to throw everything out but continue to refresh and update that. He knows all of the commissioners have busy schedules but said they need to get scheduled dates locked down. Commissioner Grossman said he wants to see an end to this project but agrees that we should receive new input based on the flood events.

Commissioner Grossman made a motion to approve the change order and the additional funds from 2011 come from the Commission Special Project Fund. Commissioner Askvig seconded the motion. Upon roll call, the commissioners voted as follows: Ayes: Commissioners Seminary, Smith, Askvig, Grossman and President Warford. Nays: None, the motion carried.

- The Board of City Commissioners discussed participation in a local multi-jurisdictional study group for the Missouri River in the area of Morton and Burleigh Counties. This group, proposed by Major General Murray Sagsveen, would include representatives of Burleigh and Morton Counties, cities of Bismarck and Mandan, the three affected Water Resource Districts and the State Water Commission.

Bill Wocken, City Administrator, said he thinks this would all be accomplished by a Joint Powers Agreement. He said it appears that the State Water Commission would chair that group which he feels would be a prudent step to move into the recovery stage. President Warford asked for discussion of representation on this group by this Board because on the next agenda item the Board will need to decide upon representation as well. Do we want Commissioner representatives or EOC representatives with the Commissioners being policymakers. Commissioner Askvig said the purposes of each group will dictate who should be represented. If it's policy driven, then it should be commissioners. Mr. Wocken said he feels the purpose of this group is to share plans between the cities and counties and the water resource districts and feels a study will come out of this group at some point and time. It will take a bit longer to put this group together so he doesn't see this going forward until sometime next summer. There was a concern earlier in the process that one jurisdiction wouldn't do something that would negatively impact other jurisdictions and that's why this group is being put together.

Commissioner Grossman wondered about the possibility of a hybrid because he feels the city has extremely competent staff. Commissioner Smith doesn't have a strong feeling but feels that staff did an excellent job during the flood so she feels they would do a great job representing the city. Commissioner Seminary said he is fine with city staff continuing in that roll. He asked if this is going to be led by General Sagsveen and the reason he asked that is because it seems like the state is top heavy here. He cares about Bismarck first and is concerned if this is led by the state. Mr. Wocken said this idea was generated by Murray Sagsveen based on this role as the Chief Recovery Officer. When it comes time for the meetings, the State Water Commission will be the

chair of the group and the reason for that is the State Water Commission has everyone's interest in mind, not one particular group. Seminary thinks that someone that isn't connected to any group has to be involved to make this a meaningful discussion.

President Warford appreciates Seminary's concerns but he is in support of the multi-jurisdictional study group. He agrees that he is concerned with this be Bismarck specific enough since that's who this Board represents. He thinks it's connected to the next agenda item. His other concern is that this multi-jurisdictional study group won't be going until 2012 when funding becomes available. Commissioner Askvig asked if there is a joint powers agreement already drafted. Mr. Wocken said at this point the draft is just a basic document at this point and it would have to be added to. Askvig asked again the purpose of the group; will there be a decision making authority. Mr. Wocken said the intention of the group is to put the study together to get the basic information to bring back to the Board. He doesn't feel that a single commissioner, let alone a staff person, could make decisions for the city of Bismarck. Therefore, they would have to bring those items back before this Board for decisions to be made. The joint powers agreement allows all the entities to share the powers that each individual entity brings forward. By working with the State Water Commission, there are a lot of resources that are allowed to be brought into the study. He believes that they are trying to get FEMA or the Corps of Engineer to assist with funds for the study.

Commissioner Askvig said he would be interested in hearing a brief explanation of the next item before he makes a decision on this item. Commissioner Seminary suggested this item be tabled until the next agenda item. Askvig seconded the motion. City Attorney Charlie Whitman said there doesn't need to be a roll call vote but it must be a consensus of the all the members to table this item. All the members agreed.

- The Board of City Commissioners discussed participation in a joint study with Burleigh County of flood issues in the Bismarck and Burleigh area. The County has appointed two commissioners, Burleigh Water Management representatives and county staff to the committee.

President Warford feels with this item the Board with be asked three things. First is to participate and second being who to appoint. The third one being the most important point is the need to plan for the future and have a formal study done. He feels the city needs to act more decisively and start the process now; we can't wait for 2012 with the multi-jurisdictional study group. He feels that our representatives, which he feels should be staff, should go to Burleigh County and ask that an RFP be issued for a study to begin within the next couple of weeks. Hire an independent firm to study the affected areas within the city and county and what we can do proactively for a potential 2012 event.

Commissioner Seminary said we are going to do the following things: issue an RFP to have an independent consultant give us strategies to deploy resources more effectively and even quicker than during this past event, include information that can be part of

planning with multi-jurisdictional study group and the joint effort with the county, appoint city staff to be part of both groups and appoint a commissioner or two to be part of the county/city team or just staff on the joint group with the county/city. Warford is leaning for staff only on the joint since they will have to come back to this Board to make decisions on policy. Staff is going to be involved in the study and the city's best and brightest were out at the EOC. Should we have an independent study on permanent flood protection; should we have some? Should Riverwood Drive be raised and to what level? Seminary said he is agreeable with staff but wonders if the staff that would be involved have enough time to take on these responsibilities. Mr. Wocken said can't speak for all the departments that could be involved but feels that staff would have to make time available. To fight a flood you have to make time and to prevent a flood, you would have to make time as well.

Commissioner Askvig said he feels staff only on the joint study with Burleigh County is fine with him. He feels the Board should be sensitive to expertise and time; a lot of people worked a lot of long hours and some are still putting in extra hours. He is inclined to agree with Commissioner Grossman's opinion on the multi-jurisdictional study group to do a hybrid with one staff person and one commissioner from this Board. Long term there will be more policy discussion at that level. He respects our staff but sometimes having a commissioner on that group would provide some scope and direction. Commissioner Smith doesn't feel strongly about a hybrid but any important decisions will come back before this Board. This needs to happen sooner rather than later.

Commissioner Seminary asked about the financial consideration from the RFP. President Warford and Mr. Wocken have spoken about this and he feels such a sense of urgency on this for us not to wait and be proactive. He feels we should pay for it. Commissioner Grossman agrees that a funding source can be found. Seminary suggests a request for qualifications (RFQ) be done instead so we can speed up the process. We can evaluate what we are looking for and consultants will submit what they are qualified to do and then we can determine what we are going to spend.

Commissioner Askvig made a motion to do a hybrid Bismarck team for the multi-jurisdictional study group (one commissioner and one or more staff persons) and appoint staff only to work on the Burleigh County group with an RFQ written and ready prior to October 25, 2011 city commission meeting. Commissioner Grossman seconded the motion. Upon roll call, the commissioners voted as follows: Ayes: Commissioners Seminary, Smith, Askvig, Grossman and President Warford. Nays: None, the motion carried.

12. The Board of City Commissioners considered the ongoing project agenda.

Commissioner Seminary said the next Belle Project is Friday, November 11th. They are looking for bands, high school age or younger. They are looking for five bands to play 25 to 30 minutes each. Those interested can call Commissioner Seminary directly at 701-258-5980.

Having completed the items on the agenda, President Warford asked if there was any further business for this meeting. There being none, the meeting was declared adjourned at 6:38 pm.